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Martin Schamberg

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LUCAS & MERCANTI, LLP
475 PARK AVENUE SOUTH
15TH FLOOR
NEW YORK, NY 10016

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN SCHAMBERG,
REINER RAFFEL, and JURGEN WIRTH

Appeal 2009-0066
Application 10/800,908¹
Technology Center 1700

Decided:² May 11, 2009

Before EDWARD C. KIMLIN, CHARLES F. WARREN, and
MARK NAGUMO, *Administrative Patent Judges*.

NAGUMO, *Administrative Patent Judge*.

¹ Application 10/800,908, *Process for the Production of Polyurethane Foams*, filed 15 March 2004, claiming the benefit under 35 U.S.C. § 119 of a German application filed 18 March 2003. The specification is referred to as the “908 Specification,” and is cited as “Spec.” The real party in interest is listed as Hennecke GmbH. (Appeal Brief, filed 31 August 2007 (“Br.”), 1.)

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

DECISION ON APPEAL

A. Introduction

Martin Schamberg, Reiner Raffel, and Jurgen Wirth (“Schamberg”) timely appeal under 35 U.S.C. § 134(a) from the final rejection³ of claims 17-35. Claims 1-16, the only other pending claims, have been withdrawn from consideration. (FR 1.) We have jurisdiction under 35 U.S.C. § 6. We AFFIRM.

The subject matter on appeal relates to an apparatus for making foamed, filled polyurethanes.

Representative Claim 17 is reproduced from the Claims Appendix to the Principal Brief on Appeal:

17. An apparatus for the continuous production of polyurethane foam comprising:

- (1) at least one storage vessel for each of the isocyanate component, polyol component, liquid carbon dioxide and any additive;
- (2) a feeding device for each of the isocyanate component, polyol component, any additive and liquid carbon dioxide;
- (3) a main mixer for mixing the isocyanate component and the polyol component;
- (4) a pipe between each of the storage vessels and the main mixer;
- (5) at least one container for receiving or storing filler;
- (6) an apparatus for the admixture of filler into the isocyanate component or the polyol component; and

³ Office action mailed 29 March 2007 (“Final Rejection”; cited as “FR”).

(7) an apparatus for comminution of agglomerates in the filler

in which

(a) means for transporting filler-containing mixture comprises at least one filter;

(b) a supply pipe coming from the CO₂ storage vessel opens into at least one pipe connecting the storage vessel for the isocyanate component or the polyol component to the main mixer;

(c) a mixing apparatus for mixing-in and dissolution of the CO₂ into the polyol or isocyanate component is arranged between the CO₂ supply pipe where it opens into the isocyanate component or polyol component supply pipe and the main mixer, and

(d) a discharge body which generates a sudden change of pressure comprising at least one fine-meshed sieve is arranged downstream of the main mixer.

(Claims App., Br. 10; paragraphing and indentation added.)

The Examiner has maintained the following ground of rejection:⁴

Claims 17-35 stand rejected under 35 U.S.C. § 1-3(a) in view of the combined teachings of Eiben,⁵ Sulzbach,⁶ Davis,⁷ and Hennecke.⁸

⁴ Examiner's Answer mailed 1 November 2007. ("Ans.").

⁵ Robert Eiben et al., *Method and Device for the Production of Foam Using Carbon Dioxide Dissolved Under Pressure*, U.S. Patent 5,789,457 (1998).

⁶ Hans-Michael Sulzbach et al., *Method and Apparatus for Continuously Dispersing Fine Particle-Sized Solids in a Liquid*, U.S. Patent 5,547,276 (1996).

⁷ Scott J. Davis and John D. Vander Ark, *Filter with Axially Movable Wiper*, U.S. Patent 5,527,462 (1996).

⁸ Hans-Michael Sulzbach et al., *Method and Device for Producing Foams*, WO 02/04190 A1 (17 January 2002); assigned to Hennecke, GmbH.

Schamberg does not dispute the Examiner's findings relating to limitations (1) through (4) and (b) through (d) of claim 17; nor does Schamberg raise any arguments directed to the separate patentability of any of the dependent claims. We also note that Schamberg has not alleged unexpected results or other "secondary" indicia of nonobviousness. Because such arguments have been waived pursuant to Bd. R. 37(c)(1)(vii),⁹ we limit our consideration to the contested limitations of claim 17, with which the remaining claims on appeal stand or fall.

Schamberg urges that the Examiner erred because, in Schamberg's view, the combined references fail to teach or suggest an apparatus in which "(1) the filler must be comminuted before being combined with a liquid reaction component and (2) the filler-containing liquid reaction component is passed through a filter before that filler-containing component is combined with the other reaction components." (Br. 6, 4th paragraph.) Most critically, Schamberg disputes the Examiner's finding that "the fine mesh screen employed in the apparatus of Eiben et al. meets the requirements of both element (a) and (d) of claim 17" (Ans. 6). In Schamberg's words, "Appellants are claiming an apparatus which includes a filter that must be positioned at a particular location within that apparatus so that it can serve the function taught in appellants' specification." (Reply Br. 2.)¹⁰

⁹ 37 C.F.R. § 41.37(c)(1)(vii), second sentence, reads: "[a]ny arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, *unless good cause is shown*." (Emphasis added).

¹⁰ Reply Brief, filed 4 January 2008.

The critical issue underlying the disagreements between Schamberg and the Examiner is whether the Examiner has construed the claims improperly by ignoring relations between structures and the functions that those structures are to perform.

B. Discussion

As the Appellant, Schamberg bears the procedural burden of showing harmful error in the Examiner's rejections. *See, e.g., In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness") (citation and internal quote omitted).

During examination, claims are to be given their broadest reasonable interpretation consistent with the specification, from the point of view of a person having ordinary skill in the art. *In re Am. Acad. Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). It is improper to read limitations from preferred embodiments in the specification into the claims. *Id.* at 1369.

Schamberg's arguments fail because the claims do not specify relations between the various recited components necessary to perform the functions described in the specification; nor do the claims recite those functions. Schamberg has not pointed to what limitations require that the filler be comminuted before being combined with a liquid reaction component, or that the filler-containing liquid reaction component be filtered before it is combined with other reaction components. Review of claim 17 reveals no such limitations. Similarly, Schamberg objects that the claimed apparatus includes a filter that must be positioned at a particular location. But Schamberg does not explain what limitation in claim 17 requires that the

structure specified by limitation (a), “means for transporting filler-containing mixture comprises at least one filter,” be positioned in any particular place. A mere list of components in a certain sequence, without requirements for physical or functional relations between or among the components, does not exclude an apparatus that contains all of the components, even if those components perform different functions for different purposes. Similarly, Schamberg’s objections to the silence of Eiben and of Hennecke regarding the formation of bubble nuclei (Br. 7, first and last paragraphs, respectively; Br 8, second through fourth paragraphs), are not probative of reversible error because there is no corresponding limitation in claim 17.

Schamberg’s arguments that neither Sulzbach nor Davis teach limitation (a) (Br. 7) fail to demonstrate reversible error because they attack the references individually and do not explain why the combined teachings do not suggest the recited filter. *Cf. In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

C. Order

We AFFIRM the rejection of claims 17-35 under 35 U.S.C. § 1-3(a) in view of the combined teachings of Eiben, Sulzbach, Davis, and Hennecke.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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LUCAS & MERCHANT, LLP
475 PARK AVENUE SOUTH
15TH FLOOR
NEW YORK, NY 10016